

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7587 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRAKASH NARAYAN RAMDHARI PANDE

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner
Ms.Siddhi Talati, A.G.P.for Respondent No. 1
Mr.B.T.Rao, for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/12/98

ORAL JUDGEMENT

1. In this writ petition under Article 226 of the Constitution of India detention order dated 9.8.1998 passed by the District Magistrate, Ahmedabad, under Section 3(2) of Prevention of Black Marketing and Maintenance of Essential Commodities Act, 1980 (for short "the Act") has been challenged with further prayer that

the petitioner be released from illegal detention.

2. Brief facts are that upon receiving information on 2nd July 1998 that Bombay Garage Petrol Pump, Ahmedabad, was engaged in illegal activity of adulterating petrol an essential commodity with solvent liquid available at cheap price, that raid was conducted by the officers of the Inspection staff. Petitioner who is said to be the cashier and is also attending and is also looking after the accounts, maintenance of register, unloading of petrol, etc. was present. Sample was taken. It was found that solvent was being mixed with petrol. Sample collected was sent for chemical analysis. The report of the Chemical Analysis was supplied to the petitioner. There are other three persons directly connected with this business and illegal activity, viz. Rajniben Bhagat, who is said to be Director and William Lowrence and Prabhakar Kashinath. The petitioner was caught red handed adulterating petrol with solvent. Other persons ran away. The petitioner also tried to run away.

3. From the report of the Chemical Analysis it was found that solvent was added in petrol and difference density and octane number, etc. was also found. On previous occasion also this concern was found adulterating petrol with solvent. On account of difference in density found in earlier surprise checking conducted on 14.12.1994 that a case No.238/95 is pending in the competent Colurt against this very concern. Finding that the activity of the petitioner and his associates was not only illegal, but in violation of various orders issued under the Essential Commodities Act, that the impugned order was passed.

4. This order has been challenged by the learned Counsel for the petitioner in this writ petition on three grounds. No other ground was pressed.

5. The first ground was that certain documents were not supplied to the petitioner. This is a vague argument. It could not be clarified what were the documents which were not supplied to the petitioner nor it could be clarified that those documents were vital documents and were referred to and relied upon by the detaining Authority in the grounds of detention. Consequently on this ground the detention order cannot be quashed.

6. The second attack has been that one document, viz. Page No.200 supplied to the petitioner is illegible

which has prevented the petitioner from making effective representation in his defence which in consequence has violated valuable right under Article 22(5) of the Constitution of India. On the factual side this copy was examined by me and it was found to be illegible. It was conceded by the learned A.G.P. as well that this document is illegible. She, however, informed that subsequently legible copy of this document, viz. density register was forwarded by the District Magistrate to the State Government under his letter dated 9.9.1998 for being given to the petitioner, but she was unable to state as to when the State Government had actually supplied second legible copy of Page No.200, viz. copy of density register to the petitioner. Learned Counsel for the petitioner has contended that even if it is believed for a moment that second copy was supplied on 9.9.1998 for which he has no definite information it was delayed supply which has infringed fundamental right of the petitioner under Article 22(5) of the Constitution of India. Several cases were cited by the learned Counsel for the petitioner on the point. In *Vikramsinh Pravinsinh Rana v/s. State of Gujarat & anr.*, reported in 1988 (2) G.L.R. 1336, this Court observed that under Article 22, Clause (5) of the Constitution of India the grounds of detention must be communicated to the detentnu. It was further found and observed that where a document or some part of it supplied to the detenu was illegible there can be said to be non-communication of grounds of detention and the detention order would get vitiated. The facts in this case were that inter-alia a copy of Judgment was supplied to the petitioner. Some pages of the Judgment were not legible. On these facts it was held that non-supply of legible documents violates fundamental right of the detenu in making effective representation in his defence. Other cases cited on the point are (i) *Mulchandbhai Shobhrajmal Ganvani v/s. The Secretary to the Government of Gujarat*, reported in 1991 (1) G.L.R. 421, (ii) *Pokhrajbhai Sohanbhai Chandel v/s. District Magistrate, Surat*, reported in 1991 (2) G.L.R. 753, and (iv) *Vikramsinh Pravinsinh Rana v/s. State of Gujarat*, reported in 1988 (2) G.L.H. 414.

7. No doubt page No.200 is copy of density register and further its copy was illegible, but the question is whether all the documents relevant or irrelevant and whether those documdents were referred to and relied upon by the detaining Authority or not should be supplied in illegible form. The requirement of law on the other hand is that the detaining Authority is bound to supply legible copies of only those documents which are relied upon in the grounds of detention. I have gone through

the grounds of detention and was unable to find out from any portion of the grounds of detention that the density register was either casually referred what to say of relied upon by the Detaining Authority. Thus, the detaining Authority has not relied upon density register in the grounds of detention. On the other hand his reliance was upon the report of the Chemical Analysis and the copy of this report was supplied to the petitioner which is mentioned in grounds of detention itself. A document which is casually referred in the grounds of detention is not to be supplied to the detenu. There is no mention in the grounds of detention that the detaining Authority has compared the entries in the density register from the report of the Chemical Analysis. Consequently if the detaining Authority excluded from his consideration the extract of density register he was not obliged to furnish its copy to the detenu. Thus, on this ground also the impugned order cannot be struck down.

8. Another contention has been that vital document was not supplied to the detenu. It could not be specified which was a vital document which was not supplied. Copy of density register cannot be said to be vital document because the detaining Authority had neither considered it nor compared it with the report of chemical Examiner.

9. Last contention has been that the detaining Authority has relied upon certain matters and a case whose copies were not furnished to the detenu and this has also rendered the impugned order invalid. Special reference was made to Page : 21 of the translation of grounds of detention. Reference was made to the last paragraphs on this page which can be reproduced as under:

"On checking dated 14.12.1994 against the Bombay Garage Ahmedabad Ltd. Petrol Pump, the licence had been cancelled taking departmental action. Even though the licence was continued as per law and the case No.238/95 is pending in Court regarding the same. In view of this, the action can be taken against you under Section 7 or Section 12 AA of the Essential Commodities Act, 1955 by the Court."

On a plain reading of this paragraph it appears that it is self contradictory and in-accurate translation. However, answer to this argument is contained at Page : 19 of the grounds of detention where it is mentioned that checking of Bombay Garage Limited Ahmedabad Petrol Pump was made by the Controller of Food

and Civil Supplies on 14.12.1994 in which big difference was found than the limit in the density of petrol and case No.238/95 is filed in the Court against the petrol pump. This case is pending in the Court. It is this case No.238/95 which is mentioned at Page : 21 and it relates to earlier checking dated 14.12.1994. The impugned detention order was not passed on the basis of checking which was conducted on 14.12.1994. On the basis of that checking a case is pending in the Court, whereas the impugned order of detention was passed in respect of checking conducted on 2.7.1998. Consequently it cannot be said that the mind of the detaining Authority was influenced by the pendency of case No.238/95. However, the sequence in which this mention has been made at Para : 21 cannot be considered in isolation. Preceding para has also to be considered. Actually while making this reference the detaining Authority was entering in exercise of consideration of alternative remedies. In the preceding para the detaining Authority observed that taking the alternative remedy into consideration except the detention with a view to prevent you from committing those serious kind of criminal activity with immediate effect the licence has been suspended taking action under the licence Order, however, there is possibility of obtaining injunction from the competent Authority or the Court. Here also there is some inaccuracy in the translation. The detaining Authority further observed that inspite of taking action for cancellation of licence the petitioner was likely to indulge in similar activity. Once the detaining Authority has entered into exercise of considering the efficacy of alternative remedy this Court in exercise of jurisdiction under Article 226 of the Constitution of India can not hold or substitute its view and observe that exercise done by the detaining Authority on this count was not proper. What is required is that the detaining Authority must be conscious in its mind what are the alternative remedies and whether those alternative remedies which are less drastic would serve the purpose of preventing black marketing and illegal activity of the petitioner. If the detaining Authority found that such alternative remedies were inefficacious, order for preventive detention could be passed and as such it cannot be said to have been rendered illegal or invalid.

10. No other point was pressed by the learned Counsel for the petitioner.

11. In the result I do not find any merit in this petition, which is hereby dismissed.

(D. C. Srivastava, J.)

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